

ORIGINAL

LAW OFFICES
LEVENTHAL, SENTER & LERMAN

SUITE 600
2000 K STREET, N.W.

WASHINGTON, D.C. 20006-1809

NORMAN P. LEVENTHAL
MEREDITH S. SENTER, JR.
STEVEN ALMAN LERMAN
RAUL R. RODRIGUEZ
DENNIS P. CORBETT
BRIAN M. MADDEN
BARBARA K. GARDNER
STEPHEN D. BARUCH
SALLY A. BUCKMAN
NANCY L. WOLF
DAVID S. KEIR
DEBORAH R. COLEMAN
BERNARD A. SOLNIK
NANCY A. ORY
WALTER P. JACOB
LINDA D. FELDMANN
RENÉE L. ROLAND
JOHN D. POUTASSE*

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

SENIOR COMMUNICATIONS
CONSULTANT
MORTON I. HAMBURG

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April 30, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Attention: Chief, Allocations Branch

Re: **Amendment of Section 73.606(b),
Table of Allotments, Television
Broadcast Stations.
(Kansas City, Missouri).**

Dear Mr. Caton:

On behalf of TV-32, Inc., permittee of station KCWB (formerly KAIZ), Channel 32, Kansas City, Missouri, we are transmitting herewith for filing an original and four copies of "Petition for Rule Making" in the above proceeding.

A "Return Copy" of this filing is also enclosed. Please date-stamp the "Return Copy" and return it to confirm your receipt.

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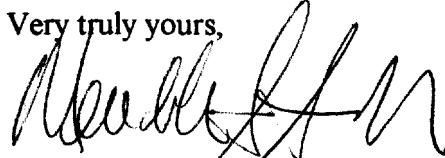
Mr. William F. Caton

April 30, 1996

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Should you have any questions, please contact either undersigned counsel.

Very truly yours,



Meredith S. Senter, Jr.

Renee L. Roland

RLR:kkj

Enclosures

cc(w/encl.): Clay Pendarvis, Chief, TV Branch (By Hand Delivery)
Keith Larson, Assistant Bureau Chief, Engineering (MMB) (By Hand Delivery)
John Karousos, Chief, Allocations Branch (By Hand Delivery)
Mr. Bernard R. Segal (By Hand Delivery)
Mr. Robert B. Liepold

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

APR 30 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.606(b)
Table of Allotments,
Television Broadcast Stations
(Kansas City, Missouri)

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RM _____

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

TV-32, Inc. ("TV 32"), permittee of station KCWB (formerly KAIZ), Channel 32, Kansas City, Missouri, by its attorneys and pursuant to Section 1.401 of the Commission's rules, hereby requests the institution of a rulemaking proceeding looking toward the amendment of Section 73.606(b) of the Commission's rules, the TV Table of Allotments, 47 C.F.R. § 73.606(b), to substitute commercial Channel 29 for Channel 32 at Kansas City, Missouri, and the corresponding modification of TV 32's construction permit without exposing the allocation to competing applications.

Compliance With Separation Requirements

As shown in the accompanying Engineering Statement of Bernard R. Segal, P.E., attached as Exhibit A, Channel 29 may be substituted for Channel 32, Kansas City, Missouri,

consistent with all pertinent Commission requirements.¹ At the proposed reference coordinates, a station operating on Channel 29 would fully satisfy all separation requirements, assuming that the Commission either changes the reference coordinates for the unused and unapplied-for noncommercial educational allocation for Channel *22 at St. Joseph, Missouri, or substitutes a Channel *46 for Channel *22 there. See Exhibit A at 5. A station operating on Channel 29 for the proposed reference coordinates would also provide full principal community contour service over Kansas City, KCWB's community of license.

Modification of KCWB's License

Because, as demonstrated below, TV 32 is compelled to seek a channel substitution for technical reasons, TV 32 requests modification of its permit for KCWB to substitute Channel 29 for Channel 32 without opening up Channel 29 for competing applications. Amendment of the Commission's Rules Regarding the Modification of FM and Television Station Licenses, 59 R.R. 2d 1466, 1468 (1986). See also Bellingham and Anacortes, Washington, 7 FCC Rcd 5453 (Mass Media Bureau 1992), recon. denied, 8 FCC Rcd 460 (Mass Media Bureau 1993) (UHF Channel 24 substituted for Channel 64 at Bellingham to allow the permittee to operate its station at increased power without having to negotiate special limits by international treaty with Canada); Columbus, Mansfield and Newark, Ohio, 18 R.R. 2d 1520 (1970) (UHF Channel 28 substituted for UHF Channel 47, Columbus, Ohio, in part, to eliminate interference

¹ It is requested that Channel 29 be substituted for Channel 32 at Kansas City, at the geographic coordinates for the KMBC, Channel 9, Kansas City, tower (39° 05' 01' North Latitude; 94° 30' 57' West Longitude).

with radio astronomy operations and to bring better service to Columbus); Fostering Expanded Use of UHF Television Broadcast Channels, 7 R.R. 2d 1574 (1966) (UHF Channel 15 substituted for UHF Channel 36, Champaign, Illinois in order to avoid possible questions of interference with radio astronomy operations on Channel 37).

TV 32 has recently learned it cannot obtain a permit from the local zoning authorities to construct station KCWB on Channel 32 as authorized and that there is no fully spaced site available for which TV 32 could obtain zoning approval. The zoning difficulties came as a complete surprise to TV 32. Indeed, in anticipation that use of the authorized site for a tower would be approved, TV 32 entered into a lease for the property and arranged to acquire a tower and arranged for program acquisitions for a targeted September 1, 1996 start-up date. In fact, for years TV 32 has relied upon the availability of its authorized site. By way of background, the FCC issued the construction permit for station KCWB on August 16, 1994; TV 32 filed its application on December 16, 1986. The site itself is located on a farm in what used to be a rural area. In recent years, however, farms have given way to suburban housing development, and when TV 32 applied for a conditional use permit to construct the tower, it encountered wide-spread and well-organized opposition from neighboring property owners. The Board of Aldermen for the City of Lees Summit rejected (by a vote of 8 to 0) TV 32's application for Special Use Permit on March 19, 1996. Attached as Exhibit B is a letter from the City Clerk to Richard W. Scarrit, TV 32's attorney, confirming the denial.

Even prior to the final vote, TV 32 began to search for alternate sites, but the area in which TV 32 may locate a tower for KCWB on Channel 32 is severely constrained by the

Commission's minimum separation and community-of-license coverage requirements. Attached as Figure 1 to Mr. Segal's Engineering Statement (Exhibit A hereto) is a map that shows the area in which a tower for Channel 32 could be located consistent with these requirements. (Even at station KCWB's currently authorized site, the station would not place a predicted city grade contour over all of Kansas City.)

Within the "fully spaced" area, TV 32 is further constrained by Federal Aviation Administration ("FAA") air-hazard limitations. Attached as an Appendix to Mr. Segal's Engineering Statement is a map prepared by John Allen, a well-known aeronautical consultant whose expert qualifications are a matter of Commission record. The map identifies three color-coded areas within the fully-spaced site zone. A tall tower cannot be constructed within the preponderance of the area, which is designated in pink, because of existing instrument approach procedures to two airports in the area. That leaves two smaller zones — an area designated in yellow where the FAA would permit construction of a tall tower, and an area designated in blue where the FAA would have to make a determination on a case-by-case basis of whether visual flight rules would be satisfied.

Attached hereto as Figure 4 to Mr. Segal's Engineering Statement is a map that shows Mr. Allen's blue and yellow zones on a larger scale. As can be seen from the map, the currently authorized site is in a blue zone, just adjacent to the one very small yellow zone. In other words, the only area where the FAA would clearly permit the construction of a tall tower is located in the city of Lees Summit, Missouri, which has already denied TV 32 a Special Use Permit. As explained in the declaration of Robert E. Liepold, the president of TV 32, which is

attached as Exhibit C, TV 32 has been able to identify only one remaining undeveloped parcel large enough to accommodate construction of a guyed tower, and it is in the same area where TV 32 has already experienced widespread and well-organized opposition to construction of a tall tower.

TV 32 also explored the possibility of utilizing an existing tower. But, as Mr. Segal reports in his Engineering Statement, there are no existing, fully spaced tall towers. Instead, all existing towers are significantly short-spaced to KBIN-TV, Channel 32, Council Bluffs, Iowa, and, in most cases, to a Channel 18 allotment in Carrollton, Missouri.

It is thus clear that TV 32 is precluded from constructing station KCWB on Channel 32 (absent the Commission's waiver of its spacing requirements). For this reason, the substitution of Channel 29 for Channel 32 and the modification of KCWB's permit without opening up the channel for competing applications is warranted.

Effect of Freeze on New Allotments

TV 32's proposal is also consistent with the Commission's current "freeze" on new television channel allocations within the minimum co-channel separation distance of certain major markets, including Kansas City. See Advanced Television Systems, 52 Fed. Reg. 28346 (July 29, 1987) ("Freeze Order"). The Commission imposed the freeze in order to reserve

spectrum for advanced television (“ATV”) in larger markets, and TV 32's proposed substitution of Channel 29 for Channel 32 is consistent with this purpose.

The proposed use of Channel 29 is mutually exclusive with TV 32's existing authorization for Channel 32. See Engineering Statement (Exhibit A hereto) at 7. Accordingly, the substitution of Channel 29 for Channel 32 will not create a new allocation in Kansas City or reduce the amount of spectrum currently authorized for possible ATV use in Kansas City. See Bellingham and Anacortes, Washington, 7 FCC Rcd at 5454 (noting that the Anacortes substitution was not affected by the freeze because no additional channel was allotted to the freeze area). In other words, adopting TV 32's proposal would not result in a “new” allotment, but merely a change in the frequency of an existing allotment. Thus, there would be no reduction in the amount of spectrum available for ATV.

Public Interest Considerations

Since TV 32 is unable to locate another parcel of land that satisfies the FCC's spacing requirements, the FAA's air safety requirements and local zoning requirements, it cannot construct and operate station KCWB as currently authorized. As authorized, therefore, KCWB cannot provide a new television service to Kansas City. The Commission's substitution of Channel 29 for Channel 32 in Kansas City, however, would permit the immediate initiation of a new television service in Kansas City.

Only as a final measure, having exhausted all other options, is TV 32 requesting the substitution of Channel 29 for Channel 32. As it turns out, however, Channel 29 is available

and in fact a better channel than Channel 32 from an allocation viewpoint. For example, a station operating on Channel 29 will provide complete city grade coverage to Kansas City, which is not possible operating on Channel 32. See Engineering Statement at 4, 5. In addition, the substitution of Channel 29 will permit TV 32 to operate KCWB from the existing de facto antenna farm. As a result, construction of the new station will have less (if any) adverse impact on the community and the environment.

If the FCC authorizes KCWB's operation on Channel 29, no other governmental approvals are necessary, as the tower has been approved by the FAA and local governmental authorities. TV 32 commits that if authorized to operate on Channel 29, it will immediately begin construction of station KCWB and commence operation as soon thereafter as possible.

THEREFORE, for the reasons set forth above, a rule making proceeding should be instituted looking toward the amendment of Section 73.606(b) of the Commission's rules to

substitute Channel 29 for Channel 32 at Kansas City, Missouri. A proposed draft of a Notice of Proposed Rule Making is attached at Exhibit D.

Respectfully submitted,

TV-32, Inc.

By: Meredith S. Senter
Meredith S. Senter, Jr.
Renee L. Roland

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809
(202) 429-8970

April 30, 1996

Its Attorneys

EXHIBIT A

**ENGINEERING STATEMENT
OF
BERNARD R. SEGAL, P.E.**

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

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**ENGINEERING STATEMENT
IN SUPPORT OF PETITION FOR RULE MAKING
TO AMEND SECTION 73.606
TABLE OF ALLOTMENTS**

The instant engineering statement has been prepared on behalf of TV 32, Inc. in support of a petition for rule making to amend Section 73.606, Table of Allotments, to substitute commercial channel 29- for channel 32- at Kansas City, Missouri. The channel substitution is needed to permit the use of an available site for construction of KCWB (formerly, KAIZ) that would not be short spaced with any station. Furthermore, the channel 29- allotment proposed for KCWB use is mutually exclusive with the KCWB channel 32- construction permit.

TV 32, Inc., the permittee of station KCWB, has been unable to secure the necessary local zoning approval for construction of the tower authorized at the construction permit site. The options for relocation on channel 32- are severely limited and are discussed in the paragraphs below. The existing tower used by KMBC-TV, channel 9, is available.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
KCWB, Kansas City, Missouri

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Figure 1 is a map which shows several items of importance impacting on the use of channel 32-. The first item is the area wherein the KCWB, channel 32-, site could be located in compliance with all FCC spacing requirements. The area is bounded on the north by the 280.8-kilometer minimum separation arc constraint from KBIN-TV, Council Bluffs, Iowa, channel 32z; on the east by the 95.7-kilometer minimum separation arc constraint from an allotment at Carrollton, Missouri, channel 18z; and on the south by an arc which would permit 80 dBu encompassment of Kansas City to the same extent as for KCWB operating with maximum permitted peak visual effective radiated power of 5000 kilowatts and antenna height comparable to that authorized. The southern limiting boundary arc is labeled "approximate" since variations in terrain from any specific site can affect the distance to the 80 dBu contour. The map shows that the 80 dBu contour for the currently authorized KCWB power/height combination, 5000 kilowatts/322 meters, just misses encompassing the far northwest corner of Kansas City. The southern limiting boundary arc would assure no less coverage of Kansas City than has been authorized.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
KCWB, Kansas City, Missouri

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The permissible site zone of Figure 1 was submitted to John Allen, aeronautical consultant, with a request that he advise where within the zone a tower comparable to the authorized 2049-foot above mean sea level height there could be an expectation for FAA approval. Mr. Allen responded with a map which was color keyed to identify three areas within the permissible site zone (See accompanying Appendix). The preponderance of the area, in pink, was ruled out completely because existing instrument approach procedures for the Richards Gebaur and Johnson County Airports cannot be adjusted to accommodate a tall tower. A second zone, in blue, would require an aeronautical study to determine if visual flight rules (VFR) could be satisfied. A third area, in yellow, would permit a tower of 2049 feet above mean sea level.

Mr. Allen's map was enlarged to match the scale of a detailed map to which the permissible site zone had been transferred, and the blue and yellow zones set forth by Mr. Allen were transferred by tracing to the detailed map. A copy of the enlarged map is included as Figure 4.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
KCWB, Kansas City, Missouri

Page 4

As it developed, the yellow zone was entirely within the corporate boundary of Lees Summit. Lees Summit is the location of the authorized KCWB site and the local zoning authority had denied a special use permit for the KCWB tower construction.

Mr. Robert Liepold, president of TV 32, Inc., reviewed those portions of the blue zone beyond the corporate limits of Lees Summit and his report of no site availability appears elsewhere as part of the instant petition.

As a practical matter, TV 32, Inc. must seek use of an alternate site that is outside the permissible site zone. A review of existing tall towers for possible KCWB use divulged that all were short spaced for operation on channel 32-. The map of Figure 1 shows the locations of Kansas City towers with heights of 1000 feet or greater. The towers and users are identified in Figure 2. The owner of the KMBC-TV channel 9 tower has determined that the tower could accommodate the loading of another antenna with associated waveguide, and has agreed to make the tower available to TV 32, Inc.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
KCWB, Kansas City, Missouri

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The KMBC-TV tower is short spaced to both KBIN-TV and to the Carrollton, channel *18z, allotment. Thus, operation on channel 32- at the KMBC-TV tower does not satisfy FCC spacing criteria. The proposal herein to substitute channel 29- for channel 32- at Kansas City, with the concomitant change in either the reference for the St. Joseph channel *22z allotment, or the substitution of channel *46- for channel *22z at St. Joseph, would permit use of the KMBC-TV tower in full compliance with all FCC rules.

The proposed substitution of channel 29- for channel 32- at Kansas City uses the geographic coordinates for the channel 9 tower, i.e., 39° 05' 01" North Latitude; 94° 30' 57" West Longitude for a reference. As indicated earlier, two plans are proffered. The first envisions a change in the reference coordinates for the unused and unapplied-for noncommercial educational channel 22z allotment at St. Joseph, Missouri, such that the full spacing requirement of the FCC rules is satisfied with respect to the proposed reference site for Kansas City on channel 29-. Figure 3 is an allocation study demonstrating compliance with the minimum spacing requirements of the rules for the proposed channel 29- allotment at Kansas City.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
KCWB, Kansas City, Missouri

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With regard to the reference change for St. Joseph, complete encompassment of St. Joseph with the 80 dBu contour could be achieved with only a modest facility having a peak visual effective radiated power of 200 kilowatts and an antenna height above average terrain of only 100 meters. The terrain from the proposed reference toward St. Joseph is relatively flat and no major obstructions intervene.

The foregoing demonstrates that the proposed change in reference coordinates would not render the allotment useless.

The second, alternate, plan that is proffered for the use of channel 29- at Kansas City would retain the reference site coordinates for St. Joseph, Missouri, but would substitute channel 46- in lieu of channel 22z for noncommercial use at St. Joseph. On channel *46-, no assignments or allotments are sufficiently close on any of the taboo channels to merit concern; particularly, taking into account that if the channel 29- allotment at Kansas City is adopted and KCWB is permitted to operate on channel 29-, the taboo

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

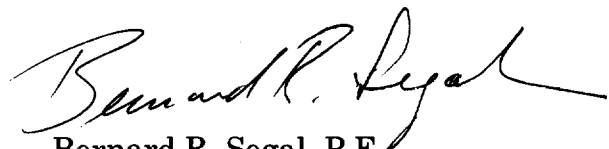
Engineering Statement
KCWB, Kansas City, Missouri

Page 7

concern between channel *46- at St. Joseph and channel 32- at Kansas City, will disappear.

The substitution of channel 29- for channel 32- at Kansas City for use for station KCWB would not fly in the face of the FCC's freeze order of July 17, 1987, in RM-5811 (Advanced Television Systems and Their Impact on the Existing Television Broadcast Service). The site proposed for use on channel 29- is short spaced with the site authorized for KCWB use on channel 32-. For the third adjacent channel situation involved, the minimum permitted separation is 31.4 kilometers. The actual separation is only 24.6 kilometers. The substitution, therefore, uses no more spectrum than has been set aside already and authorized for use at Kansas City and the mutual exclusivity condition effectively means that the channel 29- allotment would be available only for KCWB use.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 19, 1996.

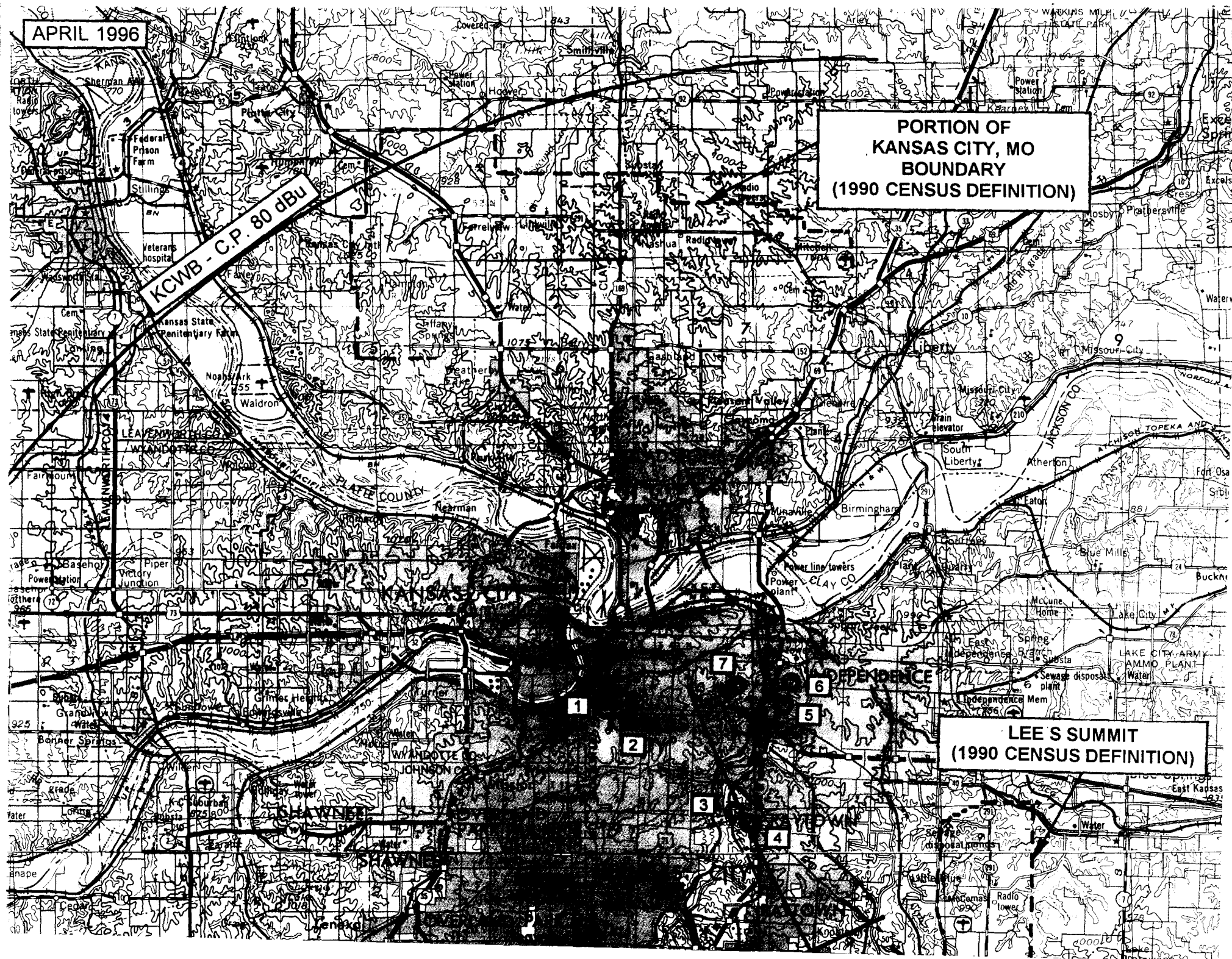

Bernard R. Segal, P.E.

APRIL 1996

PORTION OF
KANSAS CITY, MO
BOUNDARY
(1990 CENSUS DEFINITION)

KCWB - C.P. 80 dBu

LEE S SUMMIT
(1990 CENSUS DEFINITION)



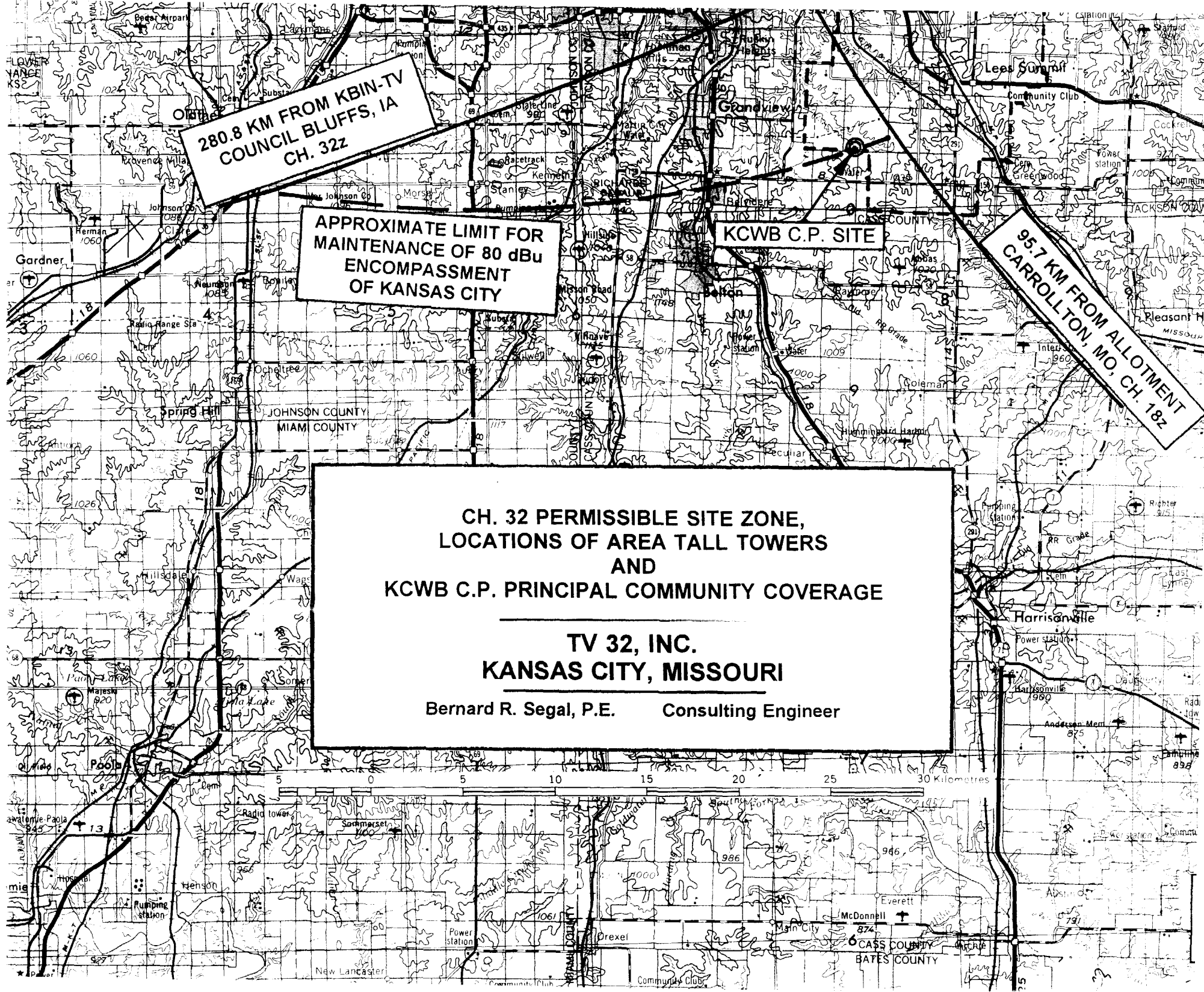


Figure 2

**ENGINEERING STATEMENT
IN SUPPORT OF PETITION FOR RULE MAKING
TO AMEND SECTION 73.606
TABLE OF ALLOTMENTS**

Identifications of Towers Shown on Map

Map No.	Stations Using the Tower	Geographic Coordinates	Height	
			<u>AGL</u> (feet)	<u>AMSL</u> (feet)
1	KSHB-TV, Ch. 41 WDAF-TV, Ch. 4 KYYS, Ch. 271C	39°04'20" N 94°35'45" W	1168	2049
2	KCTV, Ch. 5 KCMO-FM, Ch. 235C	39°04'15" N 94°34'57" W	1048	2051
3	KYFC, Ch. 50 K26CR, Ch. 26	39°01'19" N 94°30'50" W	1164	2049
4	KXTR, Ch. 243C KPRS, Ch. 277C KMXV, Ch. 227C	39°00'57" N 94°30'24" W	1100	1995
5	K29CF, Ch. 29 K35CT, Ch. 35 KLJC, Ch. 203C1	39°04'24" N 94°29'06" W	1020	1902
6	KCPT, Ch. 19 KSMO-TV, Ch. 62 KCUR-FM, Ch. 207C1 KBEQ-FM, Ch. 282C	39°04'59" N 94°28'49" W	1225	2049
7	KMBC-TV, Ch. 9 KLTH, Ch. 259C	39°05'01" N 94°30'57" W	1125	2049

**ENGINEERING STATEMENT
IN SUPPORT OF PETITION FOR RULE MAKING
TO AMEND SECTION 73.606
TABLE OF ALLOTMENTS**

Allocation Study

Channel 29-, Kansas City, MO

Site Reference: 39° 05' 01" North Latitude

94° 30' 57" West Longitude

<u>Taboo Channel</u>	<u>Nearest Allotment or Assignment</u>	<u>Geographic Coordinates</u>	<u>Spacing</u>	
			<u>Minimum Required (km)</u>	<u>Actual (km)</u>
29	None sufficiently close for concern	—	280.8	—
37	Not available for TV use	—	31.4	—
21	None sufficiently close for concern	—	31.4	—
24	None sufficiently close for concern	—	31.4	—
25	None sufficiently close for concern	—	31.4	—
26	None sufficiently close for concern	—	31.4	—
27	None sufficiently close for concern	—	31.4	—
31	None sufficiently close for concern	—	31.4	—
32	C.P., KCWB, Kansas City, MO ¹ 5000 kW(MAX, BT), 322 m	38°52'16" N 94°26'15" W	31.4	24.6
33	None sufficiently close for concern	—	31.4	—
34	None sufficiently close for concern	—	31.4	—

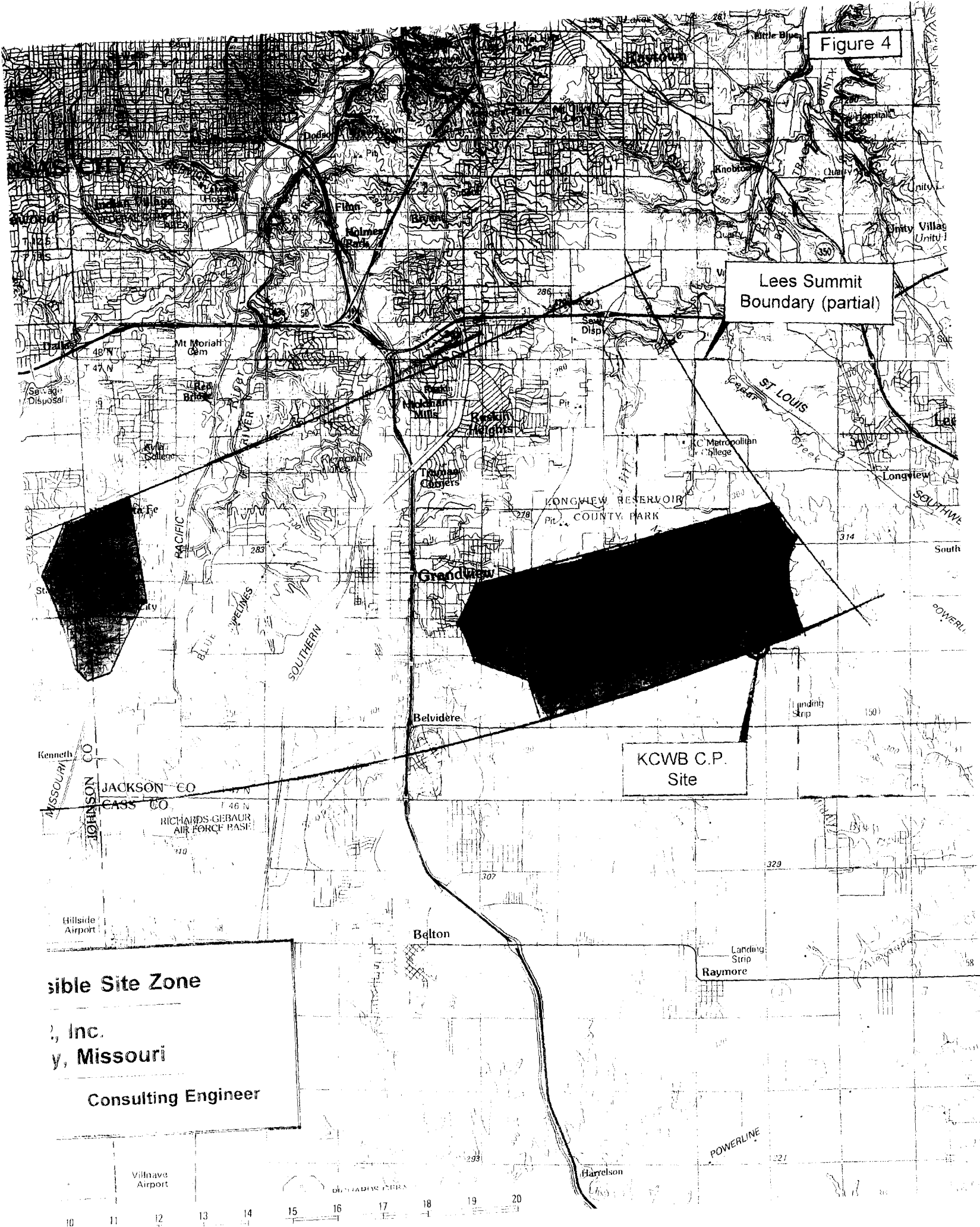
¹The proposed channel 29- allotment to Kansas City is intended for KCWB use.

Channel 29-, Kansas City, MO
Site Reference: 39° 05' 01" North Latitude
94° 30' 57" West Longitude

Taboo Channel	Nearest Allotment or Assignment	Geographic Coordinates	Spacing	
			Minimum Required (km)	Actual (km)
*28	Allotment, King City, MO	40°03'12" N 94°31'24" W	87.7	107.7
30	None sufficiently close for concern	—	87.7	—
36	None sufficiently close for concern	—	95.7	—
*22	Allotment, St. Joseph, MO	39°54'40" N 94°50'18" W ¹	95.7	96.0
43	Allotment, Topeka, KS	39°02'54" N 95°40'40" W	95.7	100.6
15	None sufficiently close for concern	—	95.7	—
44	None sufficiently close for concern	—	119.9	—
14	None sufficiently close for concern	—	119.9	—

¹Proposed new reference which is approximately 15 kilometers north of the present channel *22z reference site. Alternatively, channel *46- is proposed in lieu of channel *22z at St. Joseph.

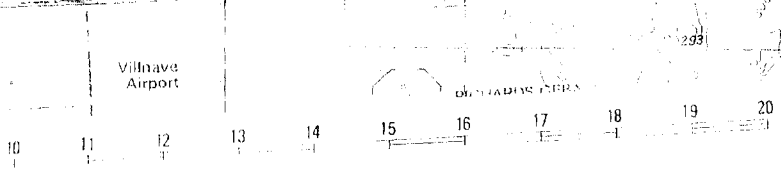
Figure 4

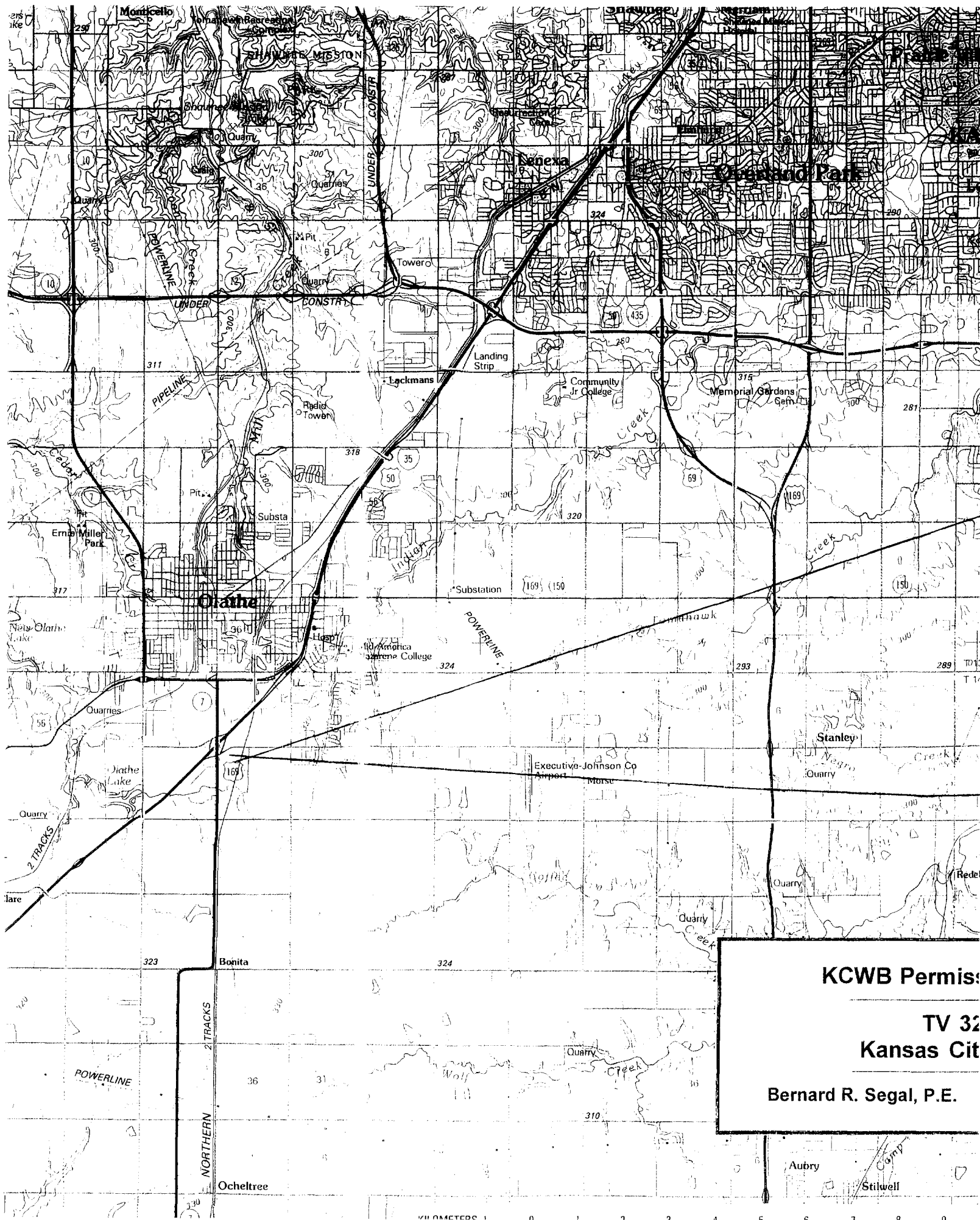


Lees Summit
Boundary (partial)

KCWB C.P.
Site

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Inc.
y, Missouri
Consulting Engineer





KCWB Permiss

TV 32
Kansas Cit

Bernard R. Segal, P.E.

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